

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2748

By: Wallace and Hilbert of the
House

and

Thompson and Rader of the
Senate

11 COMMITTEE SUBSTITUTE

12 An Act relating to tourism development incentives;
13 amending Sections 3, 4, 5, 6 and 7, Chapter 196,
14 O.S.L. 2017 (68 O.S. Supp. 2018, Sections 2393, 2394,
15 2395, 2396 and 2397), which relate to the Oklahoma
16 Tourism Development Act; modifying definitions;
17 modifying provisions related to information required
18 by Executive Director of the Oklahoma Tourism and
19 Recreation Department for applications; providing for
20 content of reports related to Entertainment
21 Districts; modifying provisions related to agreements
22 for tourism attraction projects; modifying authorized
23 term of agreements; providing for effect of
24 agreements with respect to certain entities;
 providing for certain pass-through treatment by
 Entertainment Districts; modifying provisions related
 to liability based on disallowance of certain
 payments; providing for separate agreements based
 upon certain tourism attraction projects in
 components or phases; prescribing procedures related
 to consultant reports; providing for pass-through
 treatment to Entertainment District Tenant Parties
 and prescribing procedures related thereto;
 prescribing content of certain agreements; requiring
 rules by the Oklahoma Tax Commission; providing
 procedures related to incentive payments to

1 Entertainment Districts; prescribing procedures for
2 computation of incentive payment amount; prescribing
3 procedures related to claim for payments; modifying
4 date with respect to payment of incentives; and
5 providing an effective date.

6 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

7 SECTION 1. AMENDATORY Section 3, Chapter 196, O.S.L.
8 2017 (68 O.S. Supp. 2018, Section 2393), is amended to read as
9 follows:

10 Section 2393. As used in the Oklahoma Tourism Development Act:

11 1. "Agreement" means an agreement entered into pursuant to
12 Section ~~6~~ 2396 of this ~~act~~ title, by and between the Executive
13 Director of the Oklahoma Tourism and Recreation Department and an
14 approved company, with respect to a tourism attraction project;

15 2. "Approved company" means any eligible company ~~that is or~~
16 companies seeking to undertake a tourism attraction project and is
17 approved by the Executive Director pursuant to Sections ~~5~~ 2395 and ~~6~~
18 2396 of this ~~act~~ title;

19 3. "Approved costs" means:

20 a. obligations incurred for labor and to vendors,
21 contractors, subcontractors, builders and suppliers in
22 connection with the acquisition, construction,
23 equipping and installation of a tourism attraction
24 project,

- 1 b. the costs of acquiring real property or rights in real
2 property in connection with a tourism attraction
3 project, and any costs incidental thereto,
- 4 c. the costs of contract bonds and of insurance of all
5 kinds that may be required or necessary during the
6 course of the acquisition, construction, equipping and
7 installation of a tourism attraction project which are
8 not paid by the vendor, supplier or contractor, or
9 otherwise provided,
- 10 d. all costs of architectural and engineering services
11 including, but not limited to, estimates, plans and
12 specifications, preliminary investigations, and
13 supervision of construction and installation, as well
14 as for the performance of all the duties required by
15 or consequent to the acquisition, construction,
16 equipping and installation of a tourism attraction
17 project,
- 18 e. all costs required to be paid under the terms of any
19 contract for the acquisition, construction, equipping
20 and installation of a tourism attraction project,
- 21 f. all costs required for the installation of utilities
22 in connection with a tourism attraction project
23 including, but not limited to, water, sewer, sewage
24 treatment, gas, electricity and communications, and

1 including off-site construction of utility extensions
2 paid for by the approved company, and
3 g. all other costs comparable with those described in
4 this paragraph;

5 4. "Director" means the Executive Director of the Oklahoma
6 Tourism and Recreation Department or the Executive Director's
7 designated representative;

8 5. "Eligible company" means any corporation, limited liability
9 company, partnership, sole proprietorship, business trust or any
10 other entity, operating or intending to operate a tourism attraction
11 project, whether owned or leased, within this state that meets the
12 standards promulgated by the Executive Director pursuant to Section
13 4 2394 of this act title and, with respect to an Entertainment
14 District, shall also include any such entity that will acquire,
15 construct, develop, equip, install, expand or operate all or any
16 portion of the Entertainment District, whether owned or leased;

17 6. "Entertainment District" means a mixed-use planned
18 development project, with approved costs of One Million Dollars
19 (\$1,000,000.00) or more in the aggregate, encompassing more than one
20 hundred thousand (100,000) square feet and including an
21 entertainment or recreational component and at least three of the
22 following categories: (a) retail; (b) housing; (c) office; (d)
23 restaurants; (e) hotel, regardless of whether the hotel is a
24 destination hotel; (f) grocery; (g) brewery facilities for a small

1 brewer (as defined in the Oklahoma Alcoholic Beverage Control Act,
2 Section 1-103 of Title 37A of the Oklahoma Statutes); or (h)
3 structured parking. An Entertainment District may include a project
4 that is anticipated to be completed in multiple phases;

5 7. "Entertainment District Tenant Party" means any corporation,
6 limited liability company, partnership, sole proprietorship,
7 business trust or any other entity operating within a tourism
8 attraction project that is an Entertainment District pursuant to a
9 lease or similar agreement with an approved company or otherwise;

10 8. "Final approval" means the action taken by the Executive
11 Director authorizing the eligible company to receive inducements
12 under Section 7 2397 of this ~~act~~ title;

13 ~~7.~~ 9. "Increased state sales tax liability" means that portion
14 of an ~~approved company's~~ entity's reported state sales tax liability
15 resulting from taxable sales of goods and services to its customers
16 at the tourism attraction which exceeds the reported state sales tax
17 liability for sales to its customers at the tourism attraction for
18 the same month in the calendar year immediately preceding the
19 certification as an approved company or an Entertainment District
20 Tenant Party, as applicable;

21 ~~8.~~ 10. "Inducements" means the sales tax credit or incentive
22 payment as prescribed in Section 7 2397 of this ~~act~~ title;

23 ~~9.~~ 11. "Preliminary approval" means the action taken by the
24 Executive Director conditioned upon final approval by the Executive

1 Director upon satisfaction by the eligible company of the
2 requirements of this act;

3 ~~10.~~ 12. a. "Tourism attraction" means:

- 4 (1) a cultural or historical site,
- 5 (2) a recreational or entertainment facility,
- 6 (3) an area of natural phenomena or scenic beauty,
- 7 (4) a theme park,
- 8 (5) an amusement or entertainment park,
- 9 (6) an indoor or outdoor play or music show,
- 10 (7) a botanical garden,
- 11 (8) a cultural or educational center, ~~or~~
- 12 (9) a destination hotel whose location and amenities,
13 including but not limited to upscale dining,
14 recreation and entertainment, make the hotel
15 itself a destination for tourists, or
16 (10) an Entertainment District.

17 b. A tourism attraction shall not include:

- 18 (1) lodging facilities, unless:
 - 19 (a) the facilities constitute a portion of a
 - 20 tourism attraction project and represent
 - 21 less than fifty percent (50%) of the total
 - 22 approved costs of the tourism attraction
 - 23 project, or

(b) the lodging facilities are a part of a destination hotel or an Entertainment District,

(2) facilities that are primarily devoted to the retail sale of goods, unless:

(a) the goods are created at the site of the tourism attraction project, or

(b) if the sale of goods is incidental to the tourism attraction project, or

(c) such facilities are a part of an Entertainment District,

(3) facilities that are not open to the general public, unless such facilities are a part of an Entertainment District wherein a substantial portion of the Entertainment District is open to the general public, as determined by the Executive Director,

(4) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in commercial lodging at or near the tourism attraction project, unless such facilities are a part of an Entertainment District,

(5) facilities owned by the State of Oklahoma or a political subdivision of this state, or

(6) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under the Oklahoma Horse Racing Act, Sections 200 through 209 of Title 3A of the Oklahoma Statutes, shall be a tourism attraction for purposes of this act for any approved project as outlined in subparagraph a of this paragraph or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling; and

~~11.~~ 13. "Tourism attraction project" or "project" means:

- a. the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction and equipping of a tourism attraction, and
- b. the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction and installation of a tourism attraction, including, but not limited to:
 - (1) surveys, and
 - (2) installation of utilities, which may include:

- 1 (a) water, sewer, sewage treatment, gas,
2 electricity, communications and similar
3 facilities, and
4 (b) off-site construction of utility extensions
5 to the boundaries of the real estate on
6 which the facilities are located, all of
7 which shall be used to improve the economic
8 situation of the approved company in a
9 manner that shall allow the approved company
10 to attract tourists.

11 SECTION 2. AMENDATORY Section 4, Chapter 196, O.S.L.
12 2017 (68 O.S. Supp. 2018, Section 2394), is amended to read as
13 follows:

14 Section 2394. A. The Executive Director of the Oklahoma
15 Tourism and Recreation Department, with approval of the Oklahoma
16 Tourism and Recreation Commission, shall establish standards for the
17 making of applications for inducements to eligible companies and
18 their tourism attraction projects by the promulgation of rules in
19 accordance with the Administrative Procedures Act.

20 B. With respect to each eligible company making an application
21 to the Executive Director for inducements, and with respect to the
22 tourism attraction described in the application, the Executive
23 Director shall make inquiries and request materials of the applicant
24 that shall include, but shall not be limited to:

1 1. Marketing plans for the project that target individuals who
2 are not residents of this state;

3 2. A description and location of the project, including a
4 description and boundary of the area encompassing the Entertainment
5 District, if applicable;

6 3. Capital and other anticipated expenditures for the project
7 that indicate that the total cost of the project shall exceed the
8 minimum amount set forth in subsection C of this section and the
9 anticipated sources of funding therefor, which for an Entertainment
10 District that is anticipated to be completed in multiple phases may
11 include capital and other anticipated expenditures for all phases of
12 the project;

13 4. The anticipated employment and wages to be paid at the
14 project, which may include employment and wages to be paid by the
15 eligible company and any tenants of the tourism attraction project;

16 5. Business plans which indicate the average number of days in
17 a year in which the project or any component thereof will be in
18 operation and open to the public, if applicable; and

19 6. The anticipated revenues and expenses generated by the
20 project, which for an Entertainment District may include the
21 anticipated revenues and expenses generated by each of the different
22 phases or components of the Entertainment District.

23 Based upon a review of these materials, if the Executive
24 Director determines that the eligible company and the tourism

1 attraction may reasonably be expected to satisfy the criteria for
2 final approval in subsection C of this section, then the Executive
3 Director may consider granting a preliminary approval of the
4 eligible company and the tourism attraction project pursuant to
5 subsection B of Section ~~5~~ 2395 of this ~~act~~ title.

6 C. For a tourism attraction project, after granting a
7 preliminary approval, the Executive Director shall engage the
8 services of a competent consulting firm which shall submit to the
9 Executive Director a report analyzing the data made available by the
10 eligible company and which shall collect and analyze additional
11 information necessary to determine that, in the independent judgment
12 of the consultant, the tourism attraction project will:

13 1. Attract at least twenty-five percent (25%) of its visitors
14 from among persons who are not residents of this state;

15 2. Have costs in excess of Five Hundred Thousand Dollars
16 (\$500,000.00);

17 3. Have a significant and positive economic impact on this
18 state considering, among other factors, the extent to which the
19 tourism attraction project will compete directly with existing
20 tourism attractions in this state, and the extent to which the
21 tourism attraction project will be revenue-neutral to the State of
22 Oklahoma, meaning the amount by which increased tax revenues from
23 the tourism attraction project will exceed the ~~sales tax credit~~
24 inducements allowed pursuant to Section ~~7~~ 2397 of this ~~act~~ title;

1 4. Produce sufficient revenues and public demand to be
2 operating and open to the public on a regular and persistent basis;
3 and

4 5. Not adversely affect existing employment in this state.

5 D. For a tourism attraction project that is an Entertainment
6 District and is anticipated to be completed in multiple phases, the
7 consulting firm's report may include the data and information for
8 the entire Entertainment District including any and all components
9 or phases of the Entertainment District and a separate report for
10 each component or phase of the Entertainment District shall not be
11 required.

12 E. The eligible company shall pay for the cost of the
13 consultant's report and shall cooperate with the consultant and
14 provide all of the data that the consultant deems necessary to make
15 a determination pursuant to this section.

16 SECTION 3. AMENDATORY Section 5, Chapter 196, O.S.L.
17 2017 (68 O.S. Supp. 2018, Section 2395), is amended to read as
18 follows:

19 Section 2395. A. The Executive Director of the Oklahoma
20 Tourism and Recreation Department, with the approval of the Oklahoma
21 Tourism and Recreation Commission, shall establish standards for
22 preliminary approval and final approval of eligible companies and
23 their projects by the promulgation of rules in accordance with the
24 Administrative Procedures Act.

1 B. The Executive Director may give preliminary approval by
2 designating an eligible company as a preliminarily approved company
3 and preliminarily authorizing the undertaking of the tourism
4 attraction project.

5 C. The Executive Director shall review the report of the
6 consultant prepared pursuant to subsection C of Section 4 2394 of
7 this ~~act~~ title and other information that has been made available to
8 the Executive Director in order to assist the Executive Director in
9 determining whether the tourism attraction project will further the
10 purposes of this act.

11 D. The criteria for final approval of eligible companies and
12 tourism attraction projects shall include, but shall not be limited
13 to, the criteria set forth in subsection C of Section 4 2394 of this
14 ~~act~~ title.

15 E. After a review of the relevant materials, the consultant's
16 report, other information made available to the Executive Director,
17 and completion of other inquiries, the Executive Director may give
18 final approval to the eligible company's application for a tourism
19 attraction project and may grant to the eligible company the status
20 of an approved company. The decision reached by the Executive
21 Director may be appealed by the eligible company to the Tourism and
22 Recreation Commission. The decision of the Tourism and Recreation
23 Commission shall constitute the final administrative decision of the
24 Oklahoma Tourism and Recreation Department.

SECTION 4. AMENDATORY Section 6, Chapter 196, O.S.L.
2017 (68 O.S. Supp. 2018, Section 2396), is amended to read as
follows:

Section 2396. A. Upon granting final approval, the Executive
Director of the Oklahoma Tourism and Recreation Department may enter
into an agreement with an approved company with respect to its
tourism attraction project. The terms and provisions of each
agreement shall include, but shall not be limited to:

1. The amount of approved costs, which shall be determined by
negotiations between the Executive Director and the approved
company;

2. A date certain by which the approved company shall have
completed the tourism attraction project or an individual component
or phase of the project if the tourism attraction project is an
Entertainment District. Within three (3) months of the completion
date of the whole or an individual component or phase of the
project, the approved company shall document ~~the~~ its actual ~~cost~~
costs of the project through a certification of the costs by an
independent certified public accountant acceptable to the Executive
Director; and

3. The following provisions:

a. the term of the agreement shall be ten (10) years from
the later of:

- 1 (1) the date of the final approval of the tourism
2 attraction project, or
- 3 (2) the completion date specified in the agreement,
4 if the completion date is within ~~two (2)~~ three
5 (3) years of the date of the final approval of
6 the tourism attraction project. However, the
7 term of the agreement may be extended for up to
8 two (2) additional years by the Executive
9 Director, with the advice and consent of the
10 Oklahoma Tax Commission, if the Executive
11 Director determines that the failure to complete
12 the tourism attraction project within ~~two (2)~~
13 three (3) years resulted from:
- 14 (a) unanticipated and unavoidable delay in the
15 construction of the tourism attraction
16 project,
- 17 (b) an original completion date for the tourism
18 attraction project, as originally planned,
19 which will be more than ~~two (2)~~ three (3)
20 years from the date construction began, or
- 21 (c) a change in business structure resulting
22 from a merger or acquisition,
- 23 b. in any tax year during which an agreement is in
24 effect, if the amount of sales tax to be remitted by

1 the approved company or an Entertainment District
2 Tenant Party, if applicable, exceeds the sales tax
3 credit available to the approved company or
4 Entertainment District Tenant Party, if applicable,
5 then the approved company or Entertainment District
6 Tenant Party, if applicable, shall pay the excess to
7 this state as sales tax,

8 c. within forty-five (45) days after the end of each
9 calendar year the approved company shall supply the
10 Executive Director with such reports and
11 certifications as the Executive Director may request
12 demonstrating to the satisfaction of the Executive
13 Director that the approved company is in compliance
14 with the provisions of the Oklahoma Tourism
15 Development Act, and

16 d. the approved company or an Entertainment District
17 Tenant Party, if applicable, shall not receive an
18 inducement with respect to any calendar year if:
19 (1) with respect to any tourism attraction project
20 that is not an Entertainment District in any
21 calendar year following the fourth year of the
22 agreement, the tourism attraction project fails
23 to attract at least fifteen percent (15%) of its
24

visitors from among persons who are not residents
of this state, or

(2) in any calendar year following the first year of
the project or the tourism attraction project is
not operating and open to the public on a regular
and consistent basis, which for a tourism
attraction project that is an Entertainment
District shall mean that a substantial portion of
the Entertainment District is not operating and
open to the public on a regular and consistent
basis.

B. The agreement shall not be transferable or assignable by the
approved company without the written consent of the Executive
Director but, with respect to a tourism attraction project that is
an Entertainment District, the approved company can elect to pass-
through all or a portion of the sales tax credit to one or more
Entertainment District Tenant Parties in accordance with Section
2397 of this title.

C. If the approved company utilizes or receives inducements
which are subsequently disallowed then the approved company will be
liable for the payment to the Tax Commission of an amount equal to
(i) all taxes resulting from the disallowance of the inducements
plus applicable penalties and interest, whether owed by the approved
company or an Entertainment District Tenant Party to which the

1 credits have been passed-through in accordance with Section 2397 of
2 this title, and/or (ii) all incentive payments previously received
3 by the approved company, plus applicable penalties and interest.
4 Only the approved company originally allowed a sales tax credit
5 shall be held liable to make such payments and not any Entertainment
6 District Tenant Party to whom the credit has been passed-through in
7 accordance with Section 2397 of this title.

8 D. The Executive Director shall provide a copy of each
9 agreement entered into with an approved company to the Tax
10 Commission.

11 E. For a tourism attraction project that is an Entertainment
12 District and anticipated to have multiple components or phases, the
13 Executive Director may enter into more than one agreement with
14 different approved companies for the different components or phases
15 of the Entertainment District and such agreements may be entered
16 into at different times as though the different components or phases
17 of the Entertainment District are their own separate project. In
18 such case, the Executive Director shall not be required to obtain a
19 separate consultant's report (referred to in subsection C of Section
20 2394 of this title) for each individual component or phase of the
21 Entertainment District, but only one consultant's report for the
22 entire Entertainment District.

1 SECTION 5. AMENDATORY Section 7, Chapter 196, O.S.L.
2 2017 (68 O.S. Supp. 2018, Section 2397), is amended to read as
3 follows:

4 Section 2397. A. Upon receiving notification from the
5 Executive Director of the Oklahoma Tourism and Recreation Department
6 that an approved company has entered into a tourism project
7 agreement and is entitled to the inducements provided by the
8 Oklahoma Tourism Development Act, the Oklahoma Tax Commission shall
9 provide the approved company with forms and instructions as
10 necessary to claim or receive or pass-through those inducements.

11 B. An approved company whose agreement provides that it shall
12 expend approved costs of more than Five Hundred Thousand Dollars
13 (\$500,000.00) for a tourism attraction project but less than One
14 Million Dollars (\$1,000,000.00) shall be entitled to a sales tax
15 credit if the company certifies to the Tax Commission that it has
16 expended at least the minimum amount in approved costs, and the
17 Executive Director certifies that the approved company is in
18 compliance with this act. The Tax Commission shall then issue a tax
19 credit memorandum to the approved company granting a sales tax
20 credit in the amount of up to ten percent (10%) of the approved
21 costs, but limited to the percent of the approved costs that will
22 result in the project being revenue-neutral to the State of Oklahoma
23 as determined by the Tax Commission. Subsequent requests for credit
24 for additional certified approved costs in excess of the minimum

1 amount for each project as listed in this subsection but less than
2 One Million Dollars (\$1,000,000.00) shall result in a sales tax
3 credit in the amount of up to ten percent (10%) of the approved
4 costs, but limited to the percent of the approved costs that will
5 result in the project being revenue-neutral to the State of Oklahoma
6 as determined by the Tax Commission. Sales tax credits allowed
7 pursuant to the provisions of this act shall not be transferable or
8 assignable; provided that, with respect to a tourism attraction
9 project that is an Entertainment District, the approved company can
10 elect to pass-through all or a portion of the sales tax credit to
11 one or more Entertainment District Tenant Parties. The approved
12 company and the Entertainment District Tenant Party shall jointly
13 file a copy of the written credit pass-through agreement with the
14 Oklahoma Tax Commission within thirty (30) days of the effective
15 date of the agreement. Such filing of the agreement with the
16 Oklahoma Tax Commission shall perfect such agreement. The written
17 agreement shall contain the name, address and taxpayer
18 identification number of the parties to the agreement, the amount of
19 credit being passed-through, the month and year the credit was
20 originally allowed to the approved company, the month and tax year
21 or years for which the credit may be claimed, and a representation
22 by the approved company that the approved company has neither
23 claimed for its own behalf nor conveyed such credits to any other
24 Entertainment District Tenant Party. The Tax Commission shall

1 develop a standard form for use by an approved company and an
2 Entertainment District Tenant Party demonstrating eligibility for
3 the Entertainment District Tenant Party to utilize the sales tax
4 credit. The Tax Commission shall develop a system to record and
5 track the pass-through of the sales tax credit and certify the
6 ownership of the sales tax credit and may promulgate rules to permit
7 verification of the validity and timeliness of a sales tax credit
8 claimed upon a sales tax return pursuant to this subsection but
9 shall not promulgate any rules which unduly restrict or hinder the
10 pass-through of such sales tax credit to an Entertainment District
11 Tenant Party.

12 An approved company whose agreement provides that it shall
13 expend approved costs in excess of One Million Dollars
14 (\$1,000,000.00) shall be entitled to a sales tax credit if the
15 company certifies to the Tax Commission that it has expended at
16 least One Million Dollars (\$1,000,000.00) in approved costs and the
17 Executive Director certifies that the approved company is in
18 compliance with this act. The Tax Commission shall then issue a tax
19 credit memorandum to the approved company granting a sales tax
20 credit in the amount of up to twenty-five percent (25%) of the
21 approved costs, but limited to the percent of the approved costs
22 that will result in the project being revenue-neutral to the State
23 of Oklahoma as determined by the Tax Commission. The credit on all
24 subsequent additional certified approved costs shall be in the

1 amount of up to twenty-five percent (25%) of the costs, but limited
2 to the percent of the approved costs that will result in the project
3 being revenue-neutral to the State of Oklahoma as determined by the
4 Tax Commission. For a tourism attraction project that is an
5 Entertainment District, an approved company may elect to receive an
6 incentive payment based on sales tax collections of Entertainment
7 District Tenant Parties rather than a sales tax credit. The
8 incentive payment shall be in the amount of up to twenty-five
9 percent (25%) of the approved costs but limited to the percent of
10 the approved costs that will result in the project being revenue-
11 neutral to the State of Oklahoma as determined by the Tax
12 Commission; provided that, (A) in no event shall the incentive
13 payments exceed the increased state sales tax liability of the
14 approved company and the Entertainment District Tenant Parties that
15 is actually received by the Tax Commission, and (B) the approved
16 company shall be entitled to receive only ten percent (10%) of the
17 incentive payment amount during each calendar year. The Tax
18 Commission shall issue an incentive payment memorandum to the
19 approved company granting a right to receive an incentive payment
20 from the Tax Commission in the amount of up to twenty-five percent
21 (25%) of the approved costs but limited to the percent of the
22 approved costs that will result in the project being revenue-neutral
23 to the State of Oklahoma as determined by the Tax Commission. As
24 soon as practicable after the end of each calendar year during the

1 term of the agreement, the approved company shall file a claim for
2 the incentive payment with the Tax Commission, and the Tax
3 Commission shall be responsible for ensuring that the amount of the
4 incentive payment claimed does not exceed the increased state sales
5 tax liability of the approved company and the Entertainment District
6 Tenant Parties that has been actually received by the Tax
7 Commission, which may include accessing the Oklahoma sales tax
8 returns of the Entertainment District Tenant Parties as permitted by
9 this section.

10 The cumulative ~~credits~~ inducements provided pursuant to this act
11 shall not exceed Fifteen Million Dollars (\$15,000,000.00) per year.

12 The Tax Commission shall require proof of expenditures prior to
13 issuing a tax credit memorandum or incentive payment memorandum to
14 the approved company which may be satisfied by a report from an
15 independent certified public accountant. Additional credit
16 memoranda or incentive memoranda may be issued as the approved
17 company certifies additional expenditures of approved costs.

18 No tax credit memorandum or incentive payment memorandum shall
19 be issued for any approved costs expended after the expiration of
20 ~~two (2)~~ three (3) years from the date the agreement was signed by
21 the Executive Director and the approved company. However, the
22 Executive Director, with the advice and consent of the Tax
23 Commission, may authorize ~~tax credits~~ inducements for approved costs
24 expended up to ~~four (4)~~ five (5) years from the date the agreement

1 was signed if the Executive Director determines that the failure to
2 complete the tourism attraction project within ~~two (2)~~ three (3)
3 years resulted from:

4 1. Unanticipated and unavoidable delay in the construction of
5 the tourism attraction;

6 2. An original completion date for the tourism attraction, as
7 originally planned, which will be more than ~~two (2)~~ three (3) years
8 from the date construction began; or

9 3. A change in business ownership or business structure
10 resulting from a merger or acquisition.

11 C. A sales tax credit allowed pursuant to the provisions of
12 this section may be used to offset a portion of the reported state
13 sales tax liability of the approved company or an Entertainment
14 District Tenant Party, if applicable, for all sales tax reporting
15 periods following the issuance of the credit memorandum subject to
16 the following limitations:

17 1. Only increased state sales tax liability may be offset by
18 the issued credit;

19 2. An approved company whose agreement provides that it shall
20 expend approved costs in excess of One Million Dollars
21 (\$1,000,000.00) or an Entertainment District Party, if applicable,
22 shall be entitled to use only ten percent (10%) of the amount of
23 each issued credit to offset increased state sales tax liability
24 during each calendar year, plus the amount of any unused credit

1 carried forward from a prior calendar year, and an approved company
2 whose agreement provides that it shall expend approved costs of more
3 than the minimum amount for each project as listed in this
4 subsection but less than One Million Dollars (\$1,000,000.00) shall
5 be entitled to use only twenty percent (20%) of the amount of each
6 issued credit to offset increased state sales tax liability during
7 each calendar year, plus the amount of any unused credit carried
8 forward from a prior calendar year; and

9 3. All issued credit memoranda or incentive payment memorandum
10 shall expire at the end of the month following the expiration of the
11 agreement as provided in Section ~~6~~ 2396 of this ~~act~~ title.

12 The approved company or an Entertainment District Tenant Party,
13 if applicable, shall have no obligation to refund or otherwise
14 return any amount of this ~~credit~~ inducement to the person from whom
15 the sales tax was collected.

16 D. The Tax Commission shall promulgate rules as are necessary
17 for the proper administration of the Oklahoma Tourism Development
18 Act. The Tax Commission may also develop forms and instructions as
19 necessary for an approved company or Entertainment District Tenant
20 Party, if applicable, to claim or receive or pass-through the ~~sales~~
21 ~~tax-credit~~ inducements provided by this act.

22 E. The Tax Commission shall have the authority to obtain any
23 information necessary from or regarding the approved company or an
24 Entertainment District Tenant Party, if applicable, and the

1 Executive Director to verify that approved companies or an
2 Entertainment District Tenant Party, if applicable, have received
3 the proper amounts of ~~tax credits~~ inducements as authorized by this
4 act. The Oklahoma Tax Commission shall demand the repayment of any
5 ~~credits~~ inducements taken or received in excess of the ~~credit~~
6 inducements allowed by this act.

7 F. No sales tax credit or incentive payment right authorized by
8 this section shall be granted on or after January 1, ~~2021~~ 2026.
9 Notwithstanding the foregoing, an approved company that has entered
10 into a tourism attraction project agreement with the Oklahoma
11 Tourism and Recreation Department pursuant to Section ~~6~~ 2396 of this
12 ~~act~~ title prior to January 1, ~~2021~~ 2026, shall continue to be
13 entitled to claim or receive any ~~sales tax credit~~ inducements
14 authorized by this section as contemplated by the tourism project
15 agreement.

16 SECTION 6. This act shall become effective November 1, 2019.

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18 COMMITTEE REPORT BY: COMMITTEE ON JOINT COMMITTEE ON APPROPRIATIONS
19 AND BUDGET, dated 05/16/2019 - DO PASS, As Amended.
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